IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.60 OF 2006

Shri.Shakti LPG Ltd. .. Petitioner
V/s
The Union of India & 3 Others .. Respondents

Mr.R.V.Desai, Senior Counsel with Ms.L.S.Shetty for the Petitioner.

Mr.A.J.Rana, Senior Advocate with Mr.H.V.Mehta for the Respondents.

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 13.01.2006.

P.C.:

1. Heard the learned Counsel for the parties. By this Petition, the Petitioner is challenging the order dated 3rd January, 2006 passed by the Chief Commissioner of Customs, rejecting the application for re-export under Section 69(1) of the Customs Act, read with the policy of the Circular dated 14th January, 2003.

2. The main contention of Mr.Desai, the learned Senior Counsel on behalf of the Petitioner is that though the Petitioner is selling the goods to the units situated in SEZ area, it would amount to re-export. He contends that Section 69 of the Customs Act should be construed to mean that the export to a place outside India would also include the sale to the units situated under the SEZ area. In that behalf, the learned Counsel for the Petitioner resorted to the Handbook of Procedures, wherein he referred to Chapter 7 which defines SEZ (Special Economic Zones), specially 7.3.1 and 7.10.4 to indicate that even SEZ Units may procure goods required by it without payment of duty from the bonded warehouses

in the DTA set up under the policy. The learned Senior Counsel Mr.Desai has contended that the learned Chief Commissioner of Customs has erred in not accepting the argument that the sale to the units situated in the SEZ area should be construed as the export outside India as per Section 69(1) of the Customs Act.

3. Mr.Desai, the learned Senior Counsel has further contended that, construing such a sale to be as per section 69 of the Customs Act the learned Chief Commissioner of Customs ought to have permitted such re-export as per the Circular dated 14th January, 2003.

4. We have perused the impugned order as well as the Circular dated 14th January, 2003 which is also quoted in the order. The learned Chief Commissioner of Customs has very categorically come to the conclusion that in the facts and circumstances of this case, specially the attempts of sale to the Units in the SEZ area would not amount to re-export of goods as contemplated by Section 69(1) of the Customs Act. Over and above, the Chief Commissioner of Customs has also observed in paragraph No.15 that the Petitioner had in fact voluntarily given a letter to the authority on 22nd September, 2005 requesting to stop the auction and allow them to clear the goods on payment of duty and interest. The Petitioner had also promised to file the Bill of Entry within a period of one day. The Petitioner however never come forward to clear the goods and again by their letter dated 30th Sepetmber, 2005 requested to stop the auction and also requested for a permission to re-export the goods so as to stall the auction.

5. By an order dated 19th October, 2005 passed in the Writ Petition filed by the Petitioner viz,W.P.No.6907 of 2005, this Court had granted permission to the Petitioner to approach the concerned authority and make an application seeking permission to re-export the goods. In pursuance thereto, it appears that the Petitioner had moved the concerned authority. The concerned authority viz.the Commissioner of Customs by the aforesaid order dated 3rd January, 2006 had declined to grant such a permission for the reasons stated in the said order.

6. We do not find any error or illegality in the reasoning given by the learned Chief Commissioner of Customs that there is no re-export taking place as the goods which were intended to be supplied to a unit located in SEZ, Pitampur, could not be considered as export under Section 69 of the Customs Act. Extending the bond period as per the Circular dated 14th January, 2003 does not arise in the present case as the Petitioner is not seeking to export the goods to a place outside India and is intending to sell the goods in India. The provisions contained in the Handbook of Procedures regarding deemed exports are not applicable in the present case, because of the express provisions contained in Section 69 of the Customs Act to the effect that the re-export must be to a place outside India. In this view of the matter, we do not find any error or illegality in the order passed by the Chief Commissioner

of Customs warranting our interference. The Petition is totally devoid of merits and hence the same stands dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)